

No. 98-963

Supreme Court, U.S.

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IN THE
Supreme Court of the United States

JEREMIAH W. (JAY) NIXON,
Attorney General of Missouri, *et al.*,
Petitioners,

v.

SHRINK MISSOURI GOVERNMENT PAC,
ZEV DAVID FREDMAN, and JOAN BRAY,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

**SUPPLEMENTAL BRIEF FOR RESPONDENTS
SHRINK MISSOURI GOVERNMENT PAC
AND ZEV DAVID FREDMAN**

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Respondents Shrink Missouri Government PAC and Zev David Fredman submit this supplemental brief, pursuant to Rule 25.5 of the Rules of the Court, to present a late authority, *Greater New Orleans Broadcasting Association, Inc. v. United States*, 119 S. Ct. 1923 (1999), which the Court decided on June 14, 1999, seven days after respondents filed their brief.

1. The Court's recent decision supports respondents' argument that Missouri must demonstrate that campaign contribution limits address some "real harm." Resp. Br. 28-29. The Court noted that the government cannot carry its burden of justifying a restriction on commercial speech "by mere speculation or conjecture"; instead, it "must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Greater New Orleans Broadcasting Association, Inc.*, 119 S. Ct. at 1932 (quoting *Edenfield v. Fane*, 507 U.S. 761, 770-71 (1993)).

2. The Court's recent decision also supports respondents' argument that the real harm requirement is necessary to "smoke out" the risk that Missouri has burdened political speech for unconstitutional purposes. Resp. Br. 48 (quoting *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion)); see *id.* at 47-49.

a. The Court stated that the requirement that government "demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree" is "critical." *Greater New Orleans Broadcasting Association, Inc.*, 119 S. Ct. at 1932 (quoting *Edenfield v. Fane*, 507 U.S. at 770-71 and *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 487 (1995)).

b. Absent some evidence of real harm, "a State could with ease restrict commercial speech in the service of other objectives that could not themselves justify a burden on commercial expression." *Greater New Orleans Broadcasting Association, Inc.*, 119 S. Ct. at 1932 (quoting *Rubin*, 514 U.S. at 487, quoting *Edenfield*, 507 U.S. at 771).

c. Similarly, absent some evidence that corruption or the appearance of corruption is a real harm, Missouri "could with ease restrict [political] speech in the service

of other objectives"—leveling the playing field, protecting incumbents, or merely pandering to popular fears—"that could not themselves justify a burden on [political] expression." *Id.*

Respectfully submitted,

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